DRAFT

**Memorandum of Agreement**
**between**
**The Santa Monica Bay Restoration Commission and The Bay Foundation**
**regarding the structure and function of the Santa Monica Bay National Estuary Program**
**(XX-XX-XXXX)**

**PREAMBLE**

The federal Clean Water Act authorizes the United States Environmental Protection Agency (U.S. EPA), upon nomination of a state or on its own initiative, to select an estuary to be part of the National Estuary Program. The National Estuary Program shall develop and approve conservation and management plans for each estuary that is part of the program. (Clean Water Act § 320.) The National Estuary Program is designed to promote collaborative watershed-based partnerships to develop and implement a comprehensive conservation and management plan, (CCMP) that addresses the range of environmental problems facing the estuary, while recognizing and balancing the needs of the local community. The Santa Monica Bay National Estuary Program, (SMBNEP) is one of 28 estuaries in the National Estuary Program.

The Santa Monica Bay Restoration Commission (Commission) is a non-regulatory, locally based state government entity established to monitor, assess, coordinate, and advise all state programs, and oversee funding that affects the beneficial uses, restoration, and enhancement of the Santa Monica Bay and its watershed. (Cal. Pub. Res. Code § 30988, subd. (d).) Its membership includes federal, state and local public agency officials and employees and representatives of other stakeholder interests.

The Bay Foundation (Foundation) is a non-profit U.S. Internal Revenue Code section 501(c)(3) corporation. Formed in 1991, the Foundation raises and expends funds for research, education, planning, cleanup efforts, and other priorities identified in the Santa Monica Bay National Estuary Program's CCMP.

**Commented [TF1]:** Clearly we do more than just the estuary. What should we do

**Commented [YE2R1]:** Clean Water Act, Section 320, as Amended
[ HYPERLINK "https://www.epa.gov/sites/production/files/2015-09/documents/2007_04_09_estuaries_nepprimeruments_srappendixa.pdf" ]
k. DEFINITIONS. For purposes of this section, the terms "estuary" and "estuarine zone" have the meanings such terms have in CWA § 104 (n)(3) of this title, except that the term "estuarine zone" shall also include associated aquatic ecosystems and those portions of tributaries draining into the estuary up to the historic height of migration of anadromous fish or the historic head of tidal influence, whichever is higher.

**Commented [YE3R1]:** Watershed instead of estuary?

**Commented [YE4R1]:**

## I. PURPOSE OF THE AGREEMENT

This Memorandum of Agreement (MOA) sets out the terms by which the Commission and Foundation will work together to implement the Santa Monica Bay National Estuary Program (SMBNEP) through the operation of the SMBNEP Management Conference.

**Formatted:** Highlight

### A. SMBNEP MANAGEMENT CONFERENCE

Section 320 of the Clean Water Act provides for a Management Conference as a forum for open discussion, cooperation, consensus building, and collaborative decision making to restore and enhance estuaries in the National Estuary Program. The SMBNEP Management Conference is a local stakeholder-driven partnership that develops, updates, and implements the CCMP. The



ED_002622_00000004-00001

CCMP reflects the scientific characterization of, and stakeholder concerns about, the SMBNEP study area, including water quality, habitat, and living resource challenges.

The SMBNEP's Management Conference is comprised of a Management Committee, Policy Committee, Technical Advisory Committee, Public Advisory Committee, and Host Entity.

## II. ROLES AND RESPONSIBILITIES

### A. THE COMMISSION

The Commission agrees to convene and support the SMBNEP Management Conference's Management Committee, Policy Committee, Technical Advisory Committee, and Public Advisory Committee.

#### 1. MANAGEMENT COMMITTEE

The Management Committee is charged with informing stakeholders and approving- and overseeing projects and activities to implement the CCMP and annual work plan(s). The responsibilities of the Management Committee include, but are not limited to:

- Appointing members to the Policy Committee;
- Making recommendations and approving projects and activities implementing the CCMP; and
- Approving the CCMP and annual Work Plan developed by SMBNEP staff ~~the Host Entity~~.

**Commented [TF5]:** What is the difference between an "activity" and a "project"?

Suggested by GW, not in FAQ directly but more clear perhaps

Actually "approving" or just making recommendations to the SWRCB and SCC? Is there an instance where MC may actually approve projects? If so, can restate as "approving or providing recommendations for funding of" projects...

**Commented [YE6R5]:** Activity = task, a step towards completing a project?

The Management Committee is a diverse body consisting of U.S. EPA ~~representatives~~, state and local representatives, and other stakeholders including:

- Elected and appointed policymaking officials from all governmental levels;
- Environmental representatives from federal, state, regional, and local agencies;
- Local scientific and academic communities; and
- Representatives from public and user interest groups, including those from the business, industry, community and environmental sectors.

#### 2. POLICY COMMITTEE

Members of the Policy Committee include the Management Committee's Chair and up to six Vice-Chairs appointed by the Management Committee. The Policy Committee is charged with overseeing the work activities of the Management Committee and sets the overall direction for the SMBNEP including, but not limited to:

- Regular communication with the Director and staff of the SMBNEP; and
- Developing agendas for the Management Committee meetings.

The Policy Committee members serve at the pleasure of the Management Committee.



ED_002622_00000004-00002

### 3. TECHNICAL ADVISORY COMMITTEE (TAC)

The TAC members include experts in coastal and watershed science who provide scientific opinions on a broad range of subject areas including but not limited to: intertidal ecology, fisheries, physical oceanography, plankton, sea birds, sediments, and wetlands.

The role of the TAC is to function as an unbiased scientific panel. The responsibilities of the TAC are:

- To develop and adopt a State of the Bay report every five years, and guide staff in coordinating a corresponding State of the Bay conference;
- Recommend research and project implementation priorities to the Management Committee to achieve the SMBNEP's goals and mission;
- Report to the Management Committee on technical issues as requested by Management Committee members and develop white papers where appropriate;
- Convene *ad hoc* committees, with members drawn from both within and outside the TAC, to provide guidance on specific issues;
- Provide review and recommendations to the Management Committee on select project proposals that are technical in nature or have a strong technical component; and
- Review and provide technical recommendations when such technical recommendations are requested by the Management Committee.

**Commented [TF7]:** Add "as memorialized in the CCMP and Annual Work Plan"? Are both TBF and SMBRC missions in the CCMP and WP? If not, add them in the summary?

**Commented [YE8R7]:** Both should be included in wp and CCMP

### 4. PUBLIC ADVISORY COMMITTEE (PAC)

**Commented [YE9]:** who determines PAC membership?

The Public Advisory Committee (PAC) is the broad stakeholder body of the SMBNEP Management Conference. The PAC meets twice a year to receive and comment on reporting regarding projects and activities of the SMBNEP, and to provide input as part of the SMBNEP Management Conference.

- The PAC membership is derived from representatives of public and user interest groups, including those from the business, industry, community and environmental sectors, and private citizens.

## B. THE BAY FOUNDATION

The Bay Foundation agrees to serve as the SMBNEP Management Conference's Host Entity.

The Foundation is recognized by U.S. EPA as the Host Entity for the SMBNEP. As Host Entity, the Foundation's responsibilities include the following:

- Provide office space within the Santa Monica Bay watershed for the SMBNEP director and staff;
- Work to ensure that the SMBNEP complies with all terms and conditions of the assistance agreement made with U.S. EPA;
- Maintain financial records as required by U.S. EPA and otherwise required by law;

- Develop and implement annual work plans consistent with the CCMP;
- Submit annual work plans, application packages, progress ~~and other~~ reports, and related required paperwork to U.S. EPA;
- Ensure that eligible cost requirements, including a non-Federal 50 percent match, are adhered to;
- Receive and manage funding to accomplish the goals and activities of the CCMP, and annual work plans, including ensuring that any funding awarded pursuant to Section 320 of the Clean Water Act is used for the purposes and activities identified by the Management Conference, approved by the Management Committee, and consistent with the SMBNEP's CCMP; and
- Hire and terminate the SMBNEP~~'s~~ Director with the concurrence (by majority vote) of the Management Committee.

### 1. SMBNEP Director

The SMBNEP Director is an employee of the Host Entity and functions in a capacity to represent the SMBNEP Management Conference. While performing duties for the SMBNEP, the Director does not represent any other particular entity, interest, or stakeholder. The SMBNEP Director performs the following functions:

- Hires Host Entity staff in accordance with the The Bay Foundation's personnel policies;
- Ensures that SMBNEP staff collectively possess a breadth of skills including scientific and technical expertise, ability to coordinate tasks and staff, communication and outreach expertise, administrative and financial skills, technical expertise in water quality and habitat restoration, and other skills and levels of expertise as deemed necessary to carry out the CCMP;
- E~~Works to e~~ncourages stakeholders to participate in the SMBNEP;
- Identifies CCMP implementation partners;
- Solicits local support for the SMBNEP program;
- Identifies additional sources of funding;
- Facilitates partner actions to help ensure there is no duplication of efforts among partners; and
- Reports SMBNEP results to the U.S. EPA through~~, among other things,~~ annual and semi-annual reports, NEPORT, and the program evaluation.

### 2. SMBNEP Staff

**Commented [YE10]:** does this include commission staff?

The SMBNEP staff functions include, but are not limited to:

- Day-to-day management of SMBNEP projects and activities;
- Provide administrative and technical support to the SMBNEP committees;
- Conduct public outreach and education activities;
- Coordinate and integrate SMBNEP activities with existing water quality and natural resource protection and restoration efforts in the Santa Monica Bay watershed;
- Identify partners that will advance implementation of the CCMP; and

- Inform, prepare and participate in the SMBNEP Program Evaluation as necessary.

The SMBNEP director and staff work at the direction of the Management Committee to implement the annual Work Plan and the CCMP.

## III. AMENDMENT AND TERMINATION OF THE AGREEMENT

Amendments to the MOA may be proposed to the Management Committee at any time and shall become effective upon approval by a majority of the voting members of the Management Committee. Either the Commission or Foundation can terminate the MOA with 30 days written notice.

**Commented [YE11]:** is 30 days standard?

**In consideration of the above premises, the parties hereto agree as follows:**

**Commented [TF12]:** These conditions reflect the current status of the MOA, as drafted here. Add more? These are the rples that encompass just about everything else.

**Commented [YE13R12]:**

The Commission agrees to:

- Provide the Management Committee, Policy Committee, Technical Advisory Committee, and Public Advisory Committee to the Management Conference in order to implement the Annual Work Plan and CCMP

The Foundation agrees to:

- Provide and/or coordinate the necessary staff to serve the Management Conference committees in order to implement the Annual Work Plan and CCMP
- Work with USEPA to comply with the terms and conditions of the Assistance Agreement
- Seek additional funding in order to implement the Annual Work Plan and CCMP
- Provide an NEP director

**(DRAFT) ADDENDUM**

**SMBNEP Staff:** includes staff from all entities that contribute to the implementation of the CCMP, including Foundation staff and Commission staff, as well as staff from other participating entities.

SMBNEP Committees: include all committees within the Management Conference, specifically the Management Committee, Policy Committee, Technical Advisory Committee, and Public Advisory Committee.

Study Area:

**Commented [TF14]:** Need EPA definition/understanding regarding this term.

Management Conference:

Management Committee:

Policy Committee:

Technical Advisory Committee:

Public Advisory Committee:

Host Entity:

Program Evaluation:

**Commented [TF15]:** For each of the below, need specific citations from EPA (not just "from FAQ"). Statute? Guidance Document?

**Deliberative Process / Ex. 5**